In the Supreme Court of the United States.

E. W. BLISS COMPANY, appellant, *v.* THE UNITED STATES, appellee.

No. 734. Appeal from the Court of Claims.

MEMORANDUM IN REPLY TO APPELLANT'S PETITION FOR CERTIORARI.

(1.)

Appellee respectfully submits that the record already certified by the Court of Claims is sufficient to present the whole matter to this honorable Court to enable it to consider fully and decide all questions involved in the appeal.

As the "History of the case" in the certified record shows, appellant's original petition was substituted by an amended petition which embodied the original petition and contained matter in addition thereto. The filing of this amended petition was a presentation of appellant's alleged causes of action *de novo*, in that the original petition and all proceedings thereon were superseded and merged or carried into the said amended petition.

Appellee's demurrer and motion to strike out were renewed against said amended petition and were

fully argued by oral arguments and briefs on behalf of both parties and the decision of the Court of Claims was made upon said amended petition. All questions that were raised against the original petition were raised and considered by and upon the hearing of the said amended petition.

Thereafter appellant filed a second amended petition and later a petition for rehearing, which, as shown by the certified record, the court refused to allow. Rule 25 of the "Rules of the United States Court of Claims" reads as follows:

> 25. A claimant desiring to amend his petition or to introduce new parties may do so at any time before he has closed his testimony, without special leave, by filing an amended petition embodying the amendments desired and serving a copy thereof on the Attorney General. But any such amendments or the right to introduce new parties shall be subject to the objection of the defendants either before or at the trial. *Any subsequent amendments must be by leave of court.* [Our italics.]

(2.)

As to paragraph 9, page 2, appellant's petition, the statement of the proceedings therein given is substantially correct. The facts are as follows: Appellee's demurrer and motion to strike out were brought against the (first) amended petition and the same presented by both parties in oral argument and briefs. Thereafter, at the instance of the court, as shown in the certified record, appellee was required to make its

demurrer more definite. This was done and as the case had already been fully argued and presented by the said demurrer and motion against the said (first) amended petition, it was understood by counsel for both sides that no further oral argument would be had. When the case appeared on the calendar call subsequent to the filing of appellee's more definite demurrer required by the court, appellant's counsel was not present and appellee's counsel informed the court of counsels' understanding that the case would be submitted on the briefs and so submitted the case, responding orally only to interrogations put by the court. These oral answers to the court's interrogations were apparently misconstrued as "argument" in making the entry referred to in the certified transcript, viz: "was *argued* and submitted by H. C. Workman for the defendants, counsel for claimant not being present." The reference to "argument" in said entry is understood by appellee's counsel as a clerical error.

Respectfully,

HENRY C. WORKMAN,
Attorney.

HUSTON THOMPSON,
Assistant Attorney General.

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